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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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WILLIAM A. CARMICHAEL, District Director  
of the United States Immigration and Natural-  
ization Service, Los Angeles, California, Dis-  
trict No. 20,

Appellant,

vs.

WONG CHOON OCK,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division

FILED

DEC 17 1940

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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WILLIAM A. CARMICHAEL, District Director  
of the United States Immigration and Natural-  
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trict No. 20,

Appellant,

vs.

WONG CHOON OCK,

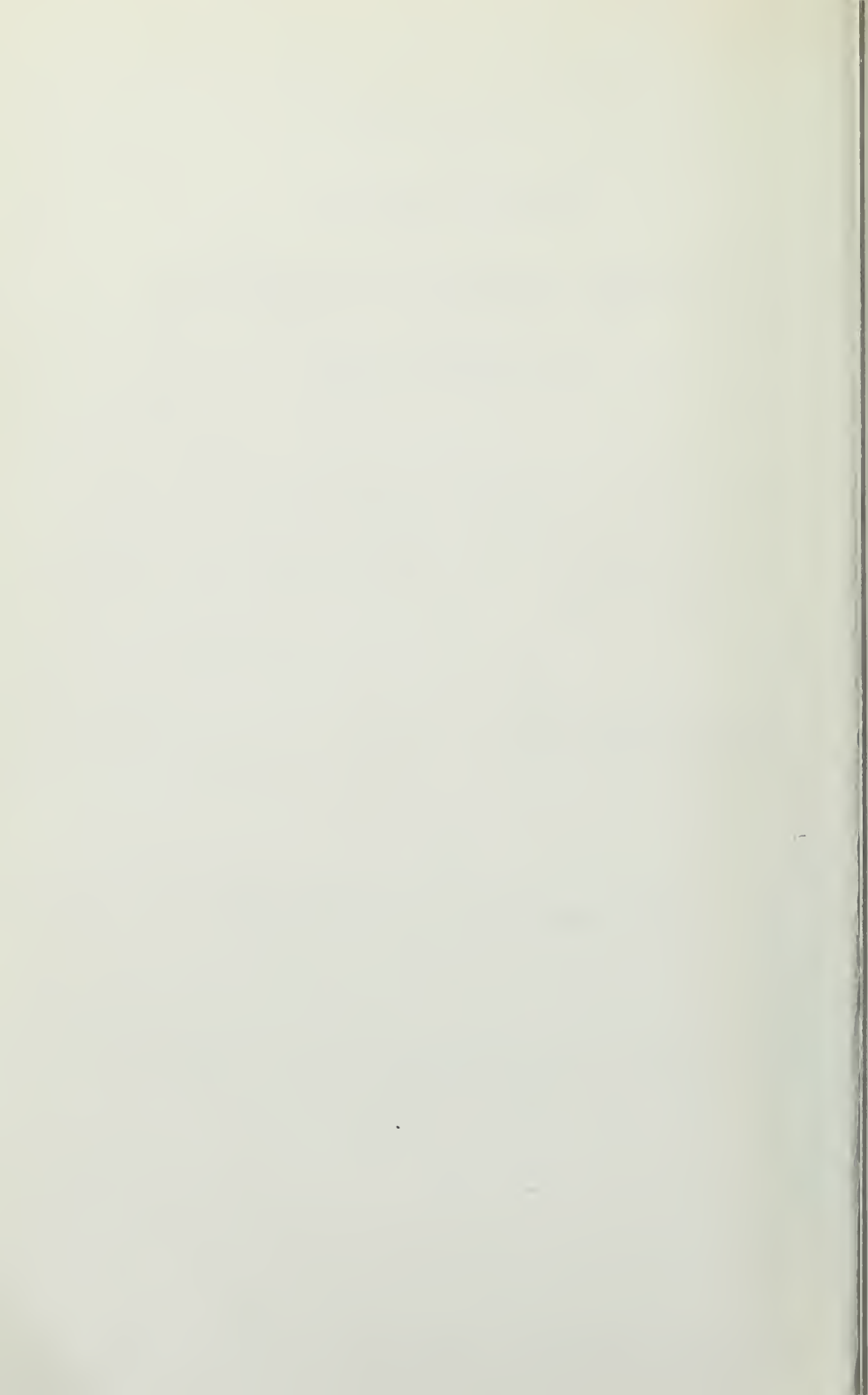
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

RUSSELL K. LAMBEAU, Esq.,  
Assistant United States Attorney,  
WILLIAM FLEET PALMER, Esq.,  
United States Attorney,  
Federal Building,  
Los Angeles, California.

For Appellee:

GEORGE W. FENIMORE, Esq.,  
Title Guarantee Building,  
411 West Fifth Street,  
Los Angeles, California. [1\*]

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In the District Court of the United States in and  
for the Southern District of California, Central  
Division.

No. 14303-C

In the Matter of the

Application of WONG CHOON OCK  
for Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS

To the United States District Court of the Southern  
District of California, Central Division:

The petition of Wong Quong respectfully shows:  
That your petitioner herein is an American citi-

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

zen, his citizenship having been conceded by the Immigration Department.

1. No previous application for Writ of Habeas Corpus has been made in this matter to this or any other court.

2. This petition is made by petitioner on behalf of Wong Choon Ock for the reason that Wong Choon Ock is a minor child, nine years of age, now being held in custody and restrained of his liberty by William A. Carmichael, District Director of the United States Immigration Service at Los Angeles, California, and that petitioner knows the facts herein set forth and verifies the same on behalf of said Wong Choon Ock, who is his younger brother.

3. Notice of the presentation of this petition to the Judge of this Court has not been served upon the person who has the custody of said Wong Choon Ock for the reason that there is not sufficient time to do so. The said Wong Choon Ock is now held under order of deportation from the Secretary of Labor at Washington, D. C., directed to said William A. Carmichael, District Director of the United States Immigration Service, and as petitioner informed and believes, intends to cause said Wong Choon Ock to be removed and deported from this country to the Republic of China [2] on a boat leaving San Pedro, California on or about Wednesday, March 20, 1940.

That said Wong Choon Ock is imprisoned, detained, confined and restrained of his liberty by William A. Carmichael, District Director of the



United States Immigration Service; that said imprisonment, detention and confinement are illegal and that the illegality thereof consists of this: That said Wong Choon Ock is a citizen of the United States; that said Wong Choon Ock was born on or about November 20, 1930, in Ing Kai Village, Hoi Ping District, China; that he is the son of Wong Quan, whose United States citizenship is conceded by the Immigration Department; that Wong Quan returned to China from the United States during July, 1929 and was accompanied by his wife, Chin King Nue, who is the mother of Wong Choon Ock. It is conceded by the Immigration Department that Chin King Nue is the wife of Wong Quan.

Wong Choon Ock applied for admission to the United States at San Pedro, California on or about June 25, 1939, but was denied admission by the Immigration Department at that time despite the fact that competent witnesses testified to the fact of his birth and relationship to his father and mother as herein above alleged, and despite the fact that there was no showing at that time of any untruth in his testimony respecting his relationship and nativity and other matters bearing directly on his claim of American citizenship. It was, however, ruled by the Board of Special Inquiry of the Immigration Department based solely upon the opinion evidence of certain doctors that the appearance and bone structure of Wong Choon Ock indicating that he was from one to three years older than he and his

parents testified and that accordingly he could not be the natural son of the said parents. The said opinion evidence of these doctors upon which the decision of the Immigration Department was based was and is uncertain and indefinite and wholly insufficient to raise any conflict or to cause discrepancy in the [3] testimony as against the positive and direct testimony of eye witnesses to the nativity of Wong Choon Ock.

That during November, 1939 the said case was reopened for further evidence as to the age of Wong Choon Ock. That on November 17, 1939 and prior to the said further hearing, request was made to the Immigration Inspector in charge of said hearing that Wong Quong, Wong Jeow and Wong Jowe each of whom is a native born citizen of the United States and each of whom is an older brother of Wong Choon Ock and each of whom was personally present when Wong Choon Ock was born be permitted to testify at said hearing. That the Immigration Department denied said request and refused to allow said eye witnesses to testify regarding the nativity of Wong Choon Ock.

That the aforesaid actions on the part of the Immigration Department prevented applicant from receiving a fair and impartial hearing of his application for admission to the United States.

That an appeal was taken from the ruling of the Special Board of Inquiry excluding applicant, and the Secretary of the Department of Labor has sus-

tained the decision of said Board of Special Inquiry and ordered the deportation of applicant.

Wherefore your petitioner prays that a Writ of Habeas Corpus may be directed to William A. Carmichael, District Director of the United States Immigration Service, or any officer or officers purporting to act under his authority, commanding him to have the body of Wong Choon Ock before this Court at a time and place therein to be specified, to do and receive what shall then and there be considered by said Court concerning said Wong Choon Ock together with the time and cause of his deportation; and that said Wong Choon Ock may be restored to his liberty.

Dated: March 19, 1940.

GEO. W. FENIMORE

Attorney for Petitioner [4]

State of California

County of Los Angeles—ss.

Wong Quong being by me first duly sworn, deposes and says: that he is the petitioner in the above entitled action; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters he believes it to be true.

WONG QUONG

Subscribed and sworn to before me this 19th day of March, 1940.

(Seal)

RICHARD H. TAYLOR

Notary Public in and for said County and State.

[Endorsed]: Filed Mar. 19, 1940. [5]

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[Title of District Court and Cause.]

### WRIT OF HABEAS CORPUS

The United States of America to William A. Carmichael, District Director of the United States Immigration Service, on any officer or officers purporting to act under his authority, greeting:

We command that you have the body of Wong Choon Ock by you imprisoned and detained as it is said together with the time and cause of such imprisonment and detention, by whatsoever name said Wong Choon Ock shall be called or charged, before the Honorable Geo. Cosgrave, Judge of the United States District Court in and for the Southern District of California, Central Division, at his Court room in the Federal Building, Los Angeles, California, on the 8th day of April, 1940, at 10 A. M. o'clock of that date, to do and receive what shall then and there be considered concerning said Wong Choon Ock; and that you have then and there this writ.

Witness the Honorable Geo. Cosgrave, Judge of the United States District Court this 19th day of March, 1940.

Attest my hand and seal of said Court the day and year last above written.

R. S. ZIMMERMAN

Clerk of the United States District Court, Southern District of California

By GEO. E. RUPERICH

Deputy

Let the Writ issue Returnable Apr. 8, 1940 at 10 A. M.

GEO. COSGRAVE

District Judge

[Endorsed]: Filed and served Mar. 19, 1940. [6]

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[Title of District Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

I, William A. Carmichael, District Director of U. S. Immigration and Naturalization Service, Los Angeles, California District No. 20, Respondent herein, for my Return to Writ of Habeas Corpus issued herein and in compliance with the said Writ of Habeas Corpus, now produce the body of Wong Choon Ock on this 8th day of April, 1940 before this Honorable Court and for my Return to said Writ deny that I am unlawfully imprisoning and detaining and confining and restraining the liberty of the aforesaid Wong Choon Ock.

For further Return to said Writ, Respondent admits that the said Wong Choon Ock arrived from China at the Port of San Pedro, California the 25th day of June, 1939 on the SS "President Coolidge"

and made application for admission into the United States, and certifies that the true cause of said Wong Choon Ock's detention is the finding and order of a duly and regularly constituted Board of Special Inquiry denying him admission into the United States made November 28, 1939, and the order of the Department of Labor, Washington, D. C., made on or about March 15, 1940 confirming the decision of the said Board of Special Inquiry and ordering the return of said Wong Choon Ock to the country whence he came; that Respondent was preparing to return the said Wong Choon Ock to the country whence he came when this Writ of Habeas Corpus was issued.

For further Return, Respondent makes a part hereof the Department of Labor certified record containing transcript of the testimony and summary and findings of the Board of Special Inquiry, San Pedro, California, and summary and findings of the Board of Review, Washington, D. C., and also certain U. S. Immigration and Naturalization Service records, identi- [7] fied by files numbers 10351/5290, 10351/5311, 12851/11-13, 13794/9-2, 21285/1-2, and 31562/7-17 (San Francisco, California), and 7402/379, 14036/232-A, 14036/333-B, 14036/968-A, 14036/1103-A, 14036/1425-A and 14036/1702-A (San Pedro, California.)

Respectfully submitted,

WILLIAM A. CARMICHAEL

District Director of U. S. Immigration and Naturalization Service, Los Angeles, California,  
District No. 20, Respondent.

[Endorsed]: Filed Apr. 8, 1940 Received copy of the within Return to Writ of Habeas Corpus this 8th day April, 1940, Geo. W. Fenimore, Attorney for Petitioner. [8]

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[Title of District Court and Cause.]

### MEMORANDUM OF DECISION

Cosgrave, District Judge.

In this matter the Board of Review on Appeal of the Immigration Department in Washington, being dissatisfied with the sufficiency of the evidence supporting the findings of the Special Board of Inquiry, sent the case back with instructions to take further expert testimony. Pursuant to such order Dr. Earl C. Kading was called. No notice whatever was given to the applicant of the production of Dr. Kading as a witness and no opportunity afforded for cross-examination of this expert on behalf of the applicant, nor was applicant given any opportunity to produce witnesses to controvert the testimony of Dr. Kading.

Such proceeding is manifestly unfair, particularly since in reaching its decision the Immigration Department has disregarded the competent and uncontradicted testimony of eye-witnesses as to the date of nativity and parentage of applicant.

The petition for writ of habeas corpus is granted,

and the petitioner is discharged from the custody of the Immigration authorities.

July 1, 1940.

[Endorsed]: Filed Jul. 1, 1940. [9]

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In the District Court of the United States in and  
for the Southern Division of California, Central  
Division

No. 14,303-C

In the Matter of  
WONG CHOON OCK  
on Habeas Corpus

ORDER GRANTING PETITION FOR WRIT  
OF HABEAS CORPUS AND DISCHARG-  
ING APPLICANT FROM CUSTODY

This cause having come on regularly for hearing in the above entitled court before the Hon. Geo. Cosgrave, Judge presiding, upon the Petition of Wong Quong for a Writ of Habeas Corpus on behalf of Wong Choon Ock and upon the return to said Writ of Habeas Corpus made by William A. Carmichael, District Director of the United States Immigration and Naturalization Service, Los Angeles, California, District No. 20, respondent herein, Geo. W. Fenimore, Esq. appearing on behalf of the petitioner and Maurice Norcop, Assistant U. S. Attorney appearing on behalf of said respondent, and said matter having been submitted to the court



for decision, and the court having found that the allegations of the said petition are true and that the said Wong Choon Ock is illegally restrained of his liberty and prevented from entry into the United States by the respondent herein.

Now, therefore, it is ordered, adjudged and decreed that said petition for Writ of Habeas Corpus be and the same is hereby granted and the applicant, Wong Choon Ock, who applied for admission into the United States at San Pedro, California, on June 25, 1939, as an American citizen, being the son of a native born American citizen, Wong Quan, is ordered, discharged and released from custody forthwith.

Done in open court this 2nd day of July, 1940.

GEO COSGRAVE

District Judge

[Endorsed]: Filed Jul. 2, 1940. [11]

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[Title of District Court and Cause.]

NOTICE OF APPEAL

To R. S. Zimmerman, Clerk of the above entitled court, and George W. Fenimore, Attorney for Wong Choon Ock:

Please take notice that William A. Carmichael, District Director of Immigration and Naturalization for Los Angeles District No. 20, Department of Justice, Respondent in the above entitled matter, hereby appeals and gives notice of appeal to

the United States Circuit Court of Appeals for the Ninth Circuit, from the decision and judgment of the above entitled Court, made and entered herein on the second day of July, 1940, discharging and releasing from custody of the immigration authorities, the petitioner, Wong Choon Ock.

Dated: July 3, 1940.

WM. FLEET PALMER  
 United States Attorney  
 By RUSSELL K. LAMBEAU  
 Assistant United States  
 Attorney

[Endorsed]: Copy mailed July 6, 1940 to George W. Fenimore, Esq., Atty. for petitioner. R. S. Zimmerman, Clerk, By E. L. S. Deputy Clerk. Filed Jul. 3, 1940. [12]

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[Title of District Court and Cause.]

STIPULATION AND ORDER  
 EXTENDING TIME

It is hereby stipulated by and between counsel for the applicant and for the United States in the above entitled matter that the appellant may have ninety (90) days from the date of the first notice of appeal within which to file the record on appeal, as provided by Rule 73(g) of the Rules of Civil Procedure; It is further stipulated that this extension may be granted by any Judge of the United States District Court for the Southern District of California.

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George W. Fenimore  
Attorney for Appellee  
WM. FLEET PALMER  
United States Attorney  
By RALPH E. LAZARUS  
RALPH E. LAZARUS  
Assistant United States  
Attorney  
Attorneys for the United States

Good cause appearing,

It is hereby ordered that the time to file the record on appeal in the above entitled matter *by* extended to ninety (90) days from the date of the first notice of appeal. .

Aug. 12, 1940

PAUL J. McCORMICK  
United States District Judge.

[Endorsed]: Filed Aug. 12, 1940. [13]

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[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated that all of the original files of the Immigration and Naturalization Service shall be transmitted to the Circuit Court of Appeals, Ninth Circuit, in connection with the appeal herein, and that said files shall constitute a part of the record on appeal and will not however be printed.

It is further stipulated that included in said records shall be the following files of the Immigration and Naturalization Service: numbers 10351/5290, 10351/5311, 12851/11-13, 13794/9-2, 21285/1-2, and 31562/7-17 (San Francisco, California), and 7402/379, 14036/232-A, 14036/333-B, 14036/968-A, 14036/1103-A, 14036/1425-A and 14036/1702-A (San Pedro, California) together with certified record of the Department of Labor, numbered 56007/819.

It is further stipulated that all exhibits contained in said files shall also constitute a part of the record and shall be forwarded therewith.

Dated: This 4th day of Nov., 1940.

WM. FLEET PALMER

United States Attorney

RUSSELL K. LAMBEAU

Assistant United States  
Attorney

Attorneys for Plaintiff

GEO. W. FENIMORE

Attorney for Defendant

It is so ordered:

PAUL J. McCORMICK

United States District Judge.

[Endorsed]: Filed Nov. 4, 1940. [14]

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[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED ON

Comes now William A. Carmichael, District Director of the United States Immigration and Natu-

ralization Service, Appellant in the above-entitled matter and respectfully presents the following statement of points relied on in the decision of the District Court for the Southern District of California:

1. The Court erred in discharging said Wong Choon Ock from custody of Appellant.

2. The Court erred in finding and holding that the proceeding resulting in Appellee's exclusion was unfair.

3. The Court erred in finding and holding that no notice was given to Appellee of the production of Dr. Kading as a witness.

4. The Court erred in finding and holding that Appellee was not given an opportunity to produce witnesses to controvert the testimony of said Dr. Kading.

5. The Court erred in finding and deciding that the Immigration Department disregarded the competent and uncontradicted testimony of eye witnesses as to the date and nativity and parentage of Appellee.

Dated this 30th day of September, 1940.

WM. FLEET PALMER,  
United States Attorney,  
By RUSSELL K. LAMBEAU  
Assistant United States  
Attorney.

[Endorsed]: Received copy of the within Points Relied on, Statement of, this 2nd day of Oct. 1940, Geo. W. Fenimore, Attorney for Appellee. Filed Oct. 2, 1940. [15]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD  
ON APPEAL

To the Clerk of Said Court:

Please prepare and duly authenticate the transcript of the following portions of the record in the above-entitled case for appeal to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Petition for Writ of Habeas Corpus and Order to Show Cause why Writ should not be granted.

2. Writ of Habeas Corpus.

3. Return to Writ of Habeas Corpus.

4. Memorandum of Decision.

5. Notice of Appeal.

6. Stipulation and Order extending time within which to file record on appeal.

7. Stipulation that original files and records of the Department of Labor be sent to Clerk of Circuit Court of Appeals as part of the appeal record.

8. Points relied on, statement of.

9. Praecipe for transcript of record on appeal.

September 30, 1940.

WM. FLEET PALMER,  
United States Attorney,  
By RUSSELL K. LAMBEAU,  
Assistant United States  
Attorney.

[Endorsed]: Received copy of the within Praecipe for Transcript of Record on Appeal this 2nd

day of October, 1940, Geo. W. Fenimore, Attorney for Appellee. Filed Oct. 2, 1940. [16]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 16, inclusive, contain full, true and correct copies of Petition for Writ of Habeas Corpus; Order Granting Writ of Habeas Corpus; Writ of Habeas Corpus; Return to Writ of Habeas Corpus; Memorandum of Decision; Minute Order July 1, 1940; Order Granting Petition and Discharging Petitioner; Notice of Appeal; Stipulation and Order Extending Time to Docket Appeal; Stipulation re original files and records of the Department of Labor; Statement of Points to be relied on, and Designation for Transcript of Record on Appeal, which together with the original Immigration records sent herewith constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 19th day of November, A. D. 1940.

(Seal)

R. S. ZIMMERMAN,  
Clerk.

By EDMUND L. SMITH  
Deputy Clerk.

[Endorsed]: No. 9685. United States Circuit Court of Appeals for the Ninth Circuit. William A. Carmichael, District Director of the United States Immigration and Naturalization Service, Los Angeles, California, District No. 20., Appellant, vs. Wong Choon Ock, Appellee. Transcript of Record upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 20, 1940.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

9685

UNITED STATES OF AMERICA,  
Appellant,

v.

WONG CHOON OCK,  
Appellee.

DESIGNATION OF RECORD AND  
STATEMENT OF POINTS RELIED ON

The United States of America, appellant herein, hereby refers to its points relied on as filed in the District Court and incorporates the same herein by reference as though herein set forth in full as the points upon which it relies on this Appeal.



The following portions of the record are hereby designated by Appellant for its record on appeal:

1. Petition for Writ of Habeas Corpus and Order granting Writ.
2. Writ of Habeas Corpus.
3. Return to Writ of Habeas Corpus.
4. Memorandum of Decision.
5. Order of July 2, 1940, signed by Judge Cosgrave.
6. Notice of Appeal.
7. All stipulations and orders extending time within which to file and perfect record on appeal.
8. Stipulation that original files and records of the Department of Labor be sent to Clerk of Circuit Court of Appeals as part of the appeal record.
9. Points relied on, statement of.
10. Praeceptum for transcript of record on appeal.

Dated: November 19, 1940.

WM. FLEET PALMER

United States Attorney

By RUSSELL K. LAMBEAU

Assistant United States  
Attorney

Received copy of the within Designation of Record and Statement of Points Relied On, this 19th day of November, 1940.

GEO. W. FENIMORE

Attorney for Appellee

[Endorsed]: Filed Nov. 20, 1940. Paul P. O'Brien, Clerk.

